Supreme Court, U.S.
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No. 93-1057

In The

Supreme Court of the United States

October Term, 1993

RICHARD M. CLEWIS, III and THE TAKE BACK TAMPA POLITICAL COMMITTEE,

Petitioners,

v.

ROBIN C. KRIVANEK, as the Hillsborough County Supervisor of Elections,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

RESPONDENT ROBIN C. KRIVANEK'S BRIEF IN OPPOSITION

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28 pp

QUESTIONS PRESENTED

I. Whether certiorari review to reconsider a Florida Supreme Court decision is appropriate when the Petitioners' standing is inadequate because they have failed to allege that any of their own legal rights or interests have been violated.

II. Whether certiorari review is appropriate to reconsider the Florida Supreme Court's finding that Florida Statutes § 98.081 (1993) is constitutional when a finding to the contrary by this Court will not provide any relief to the Petitioners.

III. Whether certiorari review to reconsider a Florida Supreme Court decision is appropriate when there is well-established constitutional law to support the Florida Supreme Court's decision.

IV. Whether certiorari review is appropriate to reconsider the Florida Supreme Court's finding that Florida Statutes § 98.081 (1993) does not violate purged voters' due process rights, when the purge conducted under § 98.081 was routinely timed and the voters were given notice that they would lose their elector status when purged.

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STATEMENT OF THE CASE

Florida Statutes § 98.081 (1993) requires Supervisors of Elections, during each odd-numbered year, to begin the process of removing the names of inactive voters from the voter registration books. Under § 98.081, individuals who have not voted for two years, and have failed to notify the Supervisor in writing that they wish to retain their elector status, are "temporarily withdrawn" from the voter registration lists. The Supervisor is required to retain the signature cards of these persons who are temporarily purged in case they seek reinstatement via formal notification pursuant to § 98.081. If these inactive voters have not sought reinstatement for a total of five years, they are then permanently purged from the voter registration lists and are required to re-register.

Pursuant to § 98.081, the Hillsborough County Supervisor of Elections Robin C. Krivanek conducted temporary purges of inactive voters in May and June of 1987 and 1989. (App., p. A2). On May 16, 1991, the Supervisor again began the statutory process of removing the names of inactive voters from the voter registration books. On that date, she mailed to each elector who had not voted in any election or made a written request that his registration records be updated during the previous two years, a postcard form to be filled out, signed and returned to her office by mail within 30 days after the postmark date. (App., pp. A3 - A4). The form stated that "to remain a voter" the recipient "must sign and return the attached voter registration renewal card immediately." (Petition for Writ, pp. A58 - A60). After the 30-day period for returning the cards ended, the County's data processing

department temporarily purged the names of those inactive voters who had not returned the cards from the voter registration books. (App., p. A5).

On August 12, 1991, Take Back Tampa filed with the Supervisor a referendum petition that was undertaken pursuant to section 10.07 of the Tampa Home Rule Charter. (Petition for Writ, p. A32). As provided for in section 10.07 of the Tampa Charter, and pursuant to Florida Statutes § 100.361 (1993), the Supervisor was to determine whether the petition contained valid signatures of qualified voters "equal in number to not less than 10 percent of the electors of the city qualified to vote at the last general municipal election." In the absence of section 10.07, Petitioners would not have had any right to bring to a referendum the repeal of Tampa's Human Rights Ordinance.

The Supervisor identified 462 signatures of persons who had been purged on June 21, 1991, and therefore were not qualified voters when they signed the petition. On September 3, 1991, the Supervisor informed the Tampa Mayor and City Council Chairman that Take Back Tampa's petition contained signatures of 12,130 qualified voters – 180 signatures short of the 12,310 signatures required by the Tampa Charter.[1] (Petition for Writ, p. A32).

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[1] The Supervisor had determined that the number of qualified electors was 123,093 and that Take Back Tampa needed to obtain 12, 310 signatures to be successful. (Petition for Writ, p. A32). This determination excluded City electors who were on the inactive voter list at the time of the last general municipal election. (Petition for Writ, p. A43).

On September 27, 1991, Take Back Tampa filed a Petition for Writ of Mandamus in the Circuit Court in and for Hillsborough County seeking to require the Supervisor to count the signatures of the 462 persons whose names had been removed from the registration books during the June 21 purge. (Petition for Writ, p. A32).

The Honorable Judge Guy W. Spicola entered an Alternative Writ in Mandamus on September 30, 1991, commanding the City Clerk and the Supervisor to show cause why a Peremptory Writ of Mandamus should not issue. (Petition for Writ, p. A33). After a hearing on the matter, the court entered its Order on Petition for Writ of Mandamus on November 22, 1991, and issued a Peremptory Writ of Mandamus to the City Clerk and the Supervisor on November 25, 1991. (Petition for Writ, pp. A31 - A55). The court entered an Order Clarifying its Order on Petition for Writ of Mandamus on December 5, 1991. (Petition for Writ, pp. A56 - A57).

The Supervisor filed a Motion for Rehearing which was denied on December 9, 1991, and filed a Notice of Appeal on the same date. The Second District Court of Appeal affirmed Judge Spicola's decision on July 1, 1992. (Petition for Writ, pp. A15 - A30).

The Florida Supreme Court granted the Supervisor's Petition for Writ of Certiorari on December 28, 1992. In its September 30, 1993, opinion, the Florida Supreme Court held that the Supervisor of Elections had not breached her legal duties and quashed the circuit court's decision, finding that the Writ of Mandamus was erroneously issued. (Petition for Writ, pp. A1 - A14). Petitioners filed a

Petition for Writ of Certiorari with this Court on December 29, 1993.[2]

SUMMARY OF ARGUMENT

The Petitioners lack adequate standing to bring this matter before the Court. It is well established that a party has standing to raise only its own legal rights and interests. Take Back Tampa and Clewis have failed to allege or prove that their own rights or interests were violated when 462 signatures on their petition were invalidated pursuant to Florida Statutes § 98.081 (1993). Likewise, Take Back Tampa is an organization, not an elector, and therefore, could not sign the petition. In theory, if anyone had his or her rights or interests violated, it was the 462 excluded electors – *who are not before the Court.*

A ruling that Florida Statutes § 98.081 (1993) is unconstitutional would result in an increased number of qualified voters, which would accordingly require an increased number of signatures necessary to meet the requirements of the City Charter. Therefore, Petitioners

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[2] It should be noted that the Petition for Writ of Certiorari draws into question the constitutionality of a Florida statute. Although Hillsborough County is a "political subdivision" of the State of Florida under Article VIII, § 1(a) of the Florida Constitution (1968), it is not an "agency" of the State under U.S. Supreme Court Rule 29.4(c). While Petitioners have not recited that 28 U.S.C. § 2403(b) may be applicable in the Petition, and do not appear to have served the Attorney General of Florida, as required by Rule 29.4(c), the Respondent has sent a copy of the Petition and Brief in Opposition to Attorney General Robert A. Butterworth.

would not have enough signatures to place their initiative on the ballot regardless of this Court's ruling.

Petitioners have confused the Constitutional provision "right to petition the Government for redress of grievances" with the right granted by the Tampa City Charter which affords the opportunity to affect legislation through referendum. Because the Petitioners have misconstrued the nature of this right, their constitutional arguments must fail.

Finally, Florida Statutes § 98.081 (1993) adequately safeguards inactive voters' due process rights by providing these individuals with notice of an impending purge and granting them the opportunity to protect their status as qualified voters.

REASONS FOR DENYING WRIT OF CERTIORARI

I.

PETITIONERS LACK ADEQUATE STANDING TO BRING THIS MATTER BEFORE THE COURT BECAUSE THEY HAVE FAILED TO ALLEGE ANY OF THEIR OWN LEGAL RIGHTS OR INTERESTS THAT HAVE BEEN VIOLATED BY THE STATUTE.

The Petitioners, Clewis and Take Back Tampa, have not alleged that any of their own legal rights or interests have been violated under Florida Statutes § 98.081 (1993). In their Petition for Writ of Mandamus filed on September 27, 1991, Clewis and Take Back Tampa merely alleged that Clewis is "a qualified voter of the City of Tampa" and Take Back Tampa is a committee consisting of "qualified voters in Tampa." Petitioners then generally alleged

that "electors of the City of Tampa are being denied their Constitutional right to vote on an issue of great public importance." (Petition for Writ, pp. A73 - A74). In *Warth v. Seldin*, 422 U.S. 490, 499 (1975), this Court stressed its long-standing holding that a plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. *See also United States v. Raines*, 362 U.S. 17 (1960).

Petitioners have not alleged that Mr. Clewis or any members of Take Back Tampa were among those persons whose petition signatures were invalidated. Thus, the threshold requirement for standing – violation of the Petitioners' legal rights – has not been met. Furthermore, Take Back Tampa is an organization, not an elector, and therefore does not have a right to vote or petition under the Constitution. Therefore, the organization also lacks standing to sue. In other cases in which the constitutionality of voter purge statutes have been reviewed, the plaintiffs who have alleged violations of equal protection, due process and First Amendment rights have met the requirements of standing based on allegations that they were personally purged from the voter registration lists or were on the list of inactive voters to be removed under the statute. *See, e.g., Hoffman v. State of Maryland*, 928 F. 2d 646 (4th Cir. 1991); *Duprey v. Anderson*, 518 P. 2d 807 (Colo. 1974). *See also Rosario v. Rockefeller*, 410 U.S. 752, 759 (1973) (Petitioners who did not claim to be newly arrived residents of the state and did not claim that they had moved from one county to another or even that they had changed their residence at all within the relevant period could not represent a class to which they did not belong and lacked standing to assert that the New York

voter registration requirement established a durational residence requirement which was unconstitutional and violated the right to travel). The Petitioners in this action have not suffered any personal injury for which they can assert a claim for relief, and consequently, lack standing to bring this issue before the Court.

II.

A RULING BY THIS COURT THAT FLORIDA STATUTES § 98.081 (1993) IS UNCONSTITUTIONAL WILL NOT PROVIDE ANY PERSONAL RELIEF TO THE PETITIONERS.

Even if this Court finds that Take Back Tampa and Clewis have standing, a ruling that Florida Statutes § 98.081 (1993) is unconstitutional will not provide Petitioners with their desired relief. Section 10.07 of the Tampa City Charter is the only means by which Petitioners can attempt to get the validly adopted Human Rights Ordinance repealed by referendum. Section 10.07 provides:

> The qualified voters of the city shall have the power to propose ordinances to the council or to require reconsideration of any ordinance by petition signed by the electors of the city equal in number to not less than 10 percent of the electors of the city qualified to vote at the last general municipal election . . . .

It is because of the requirements of § 98.081 that many of the signatures on Petitioners' initiative petition were invalidated and the petition did not meet the 10 percent requirement. However, a ruling by this Court that § 98.081 is unconstitutional would mean that the purge

done by the Supervisor prior to the last election would accordingly be invalid. If the Supervisor must then count the signatures of inactive voters who she purged prior to the last election as eligible to vote at the last election, then those persons would also have to be counted for the purpose of establishing the number of signatures required to place the matter on the ballot. Inactive voters who were purged under § 98.081 prior to the last election were not counted by the Supervisor when determining the number of signatures which Petitioners were required to obtain to equal 10 percent. (Petition for Writ, p. A43).

Placing all of these purged voters into the community of voters from which the 10 percent is calculated would considerably raise the number of signatures required under section 10.07. For instance, during the last purge, 25,000 individuals were temporarily withdrawn from the registration lists. (App., p. A2). If these individuals had been counted, the Petitioners would then have needed approximately 2,500 more signatures to meet the 10 percent requirement. Therefore, it is apparent that Petitioners did not have a sufficient number of signatures regardless of whether or not § 98.081 is found constitutional.

III.

FIRMLY-ESTABLISHED CASE LAW SUPPORTS THE FINDING THAT FLORIDA'S VOTER PURGE STATUTE IS CONSTITUTIONAL.

Virtually every state has a voter purge statute which requires the names of inactive voters to be removed from the voter registration books if they do not vote over a

certain length of time. Alabama, Colorado, Georgia, Indiana, Kentucky, Mississippi, North Carolina, Rhode Island, South Dakota, Tennessee, Utah and Virginia have a temporary and permanent purge system like Florida.[3] Several state and federal courts have considered whether these voter purge statutes are constitutional and have consistently upheld these statutes based on this Court's prior decisions. *See, e.g., Hoffman*, 928 F. 2d at 647; *Duprey*, 518 P. 2d at 809; *Citizens' Comm. for Recall of Jack Williams v. Marston*, 507 P. 2d 113, 116 (1973); *Williams v. Osser*, 350 F. Supp. 646, 653 (E.D. Pa. 1972).[4] These statutes have been challenged for violating "the right to vote (or not vote)," "the right to freedom of speech," and equal protection and due process principles. The fact that purged voters are unable to validly sign referendum petitions was considered when the District Court of Maryland upheld the Maryland voter purge statute in *Hoffman v. State of Maryland*, 736 F. Supp. 83, 85 (D. Md. 1990).

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[3] *See* Ala. Code § 17-4-213 (1993); Colo. Rev. Stat. § 1-2-224 (1993); Ga. Code Ann. § 21-3-133 (1993); Ind. Code Ann. 3-7-9-1 (West 1993); Ky. Rev. Stat. Ann. § 116.112 (Baldwin 1993); Miss. Code Ann. § 23-15-159 (1993); N.C. Gen. Stat. § 163-69 (1993); R.I. Gen. Laws § 17-01-1 (1993); S.D. Codified Laws Ann. § 12-4-19 (1993); Tenn. Code Ann. § 2-2-106 (1993); Utah Code Ann. § 20A-5-402 (1993); Va. Code Ann. § 24.1-59 (Michie 1993).

[4] The one case in which a court found a voter purge statute to be unconstitutional was in *Michigan State UAW Community Action Program Council v. Austin*, 198 N.W. 2d 385 (Mich. 1972). This case was one of the earliest cases to consider the constitutionality of a voter purge statute and most of the cases decided after this case have specifically rejected the Michigan Supreme Court's reasoning in the case. *See Williams*, 350 F. Supp. at 652; *Duprey*, 518 P. 2d at 810, *Hoffman v. State of Maryland*, 736 F. Supp. 83, 86 (D. Md. 1990).

These courts have recognized that states are entitled under the Constitution to impose appropriate restrictions on voter registration and the electoral process in order "to keep accurate, reliable and up-to-date voter registration lists," *Marston v. Lewis*, 410 U.S. 679, 681 (1973); *Burns v. Forston*, 410 U.S. 686, 686-687 (1973), "to prevent voter fraud," *Dunn v. Blumstein*, 405 U.S. 330, 345 (1972), and, in general, "to preserve the integrity of the electoral process," *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973). These courts have also found that the requirement that an inactive voter must send in a form to continue to engage in the electoral process, or even a requirement that the voter re-register, is a very minimal burden in relation to the protection of the state interests stated above. As a result, these courts have all held that the burdens imposed by the voter purge statutes do not violate the inactive voter's First Amendment, equal protection and due process rights under the Constitution. *See Hoffman*, 928 F. 2d at 649 (relying on *Rosario*, 410 U.S. at 761, for the finding that "[e]ven considering that re-registration may be somewhat burdensome, it is a small price to pay for the prevention of vote fraud."); *Williams*, 350 F. Supp. at 653; *Duprey*, 518 P. 2d at 810; *Citizens' Comm. for Recall*, 507 P. 2d at 116.

1. *Meyer v. Grant* and the other cases relied on by the Petitioners involve different rights and are factually distinguishable from the present matter.

The Petitioners rely extensively on *Meyer v. Grant*, 486 U.S. 414 (1988), to support the proposition that Florida Statutes § 98.081 (1993) must be narrowly drawn to

advance a compelling state interest in order to prevent the validation of signatures on initiative petitions. However, *Meyer* was based on facts and legal rights not present in this case.

Meyer dealt with a state's restrictions on who could circulate candidacy petitions and not with the methods used to validate signatures on initiative petitions. The statute in *Meyer* made it a felony to pay petition circulators, and it was challenged, not on the grounds that it violated appellees' right to petition, but on the grounds that it "abridged appellees' right to engage in political speech." 486 U.S. at 416. Therefore, the right recognized in *Meyer* involved the traditional "free speech" right of the petition circulators to circulate their petitions and their ideas without being unnecessarily encumbered. This Court has traditionally required that any law interfering with such a right be narrowly drawn to advance a compelling state interest.

In the present case, however, the citizens of Tampa do not have an inherent "fundamental" right to have a referendum for legislation on the ballot. The City Charter grants this right only to "qualified voters." In the absence of that provision, no right to petition to repeal a local ordinance via referendum exists under the state or federal constitutions or applicable statutes.

Petitioners cite no factually applicable case law or constitutional provisions which suggest that the First Amendment's "right to petition the Government for redress of grievances" includes the right of individuals to take part in the legislative process by attempting to repeal a validly enacted law through a referendum. *See*

Southeastern Mich. Fair Budget v. Killeen, 395 N.W. 2d 325, 329 (Mich.App. 1986) ("We know of no constitutional provision or case law holding that the right to petition includes the right to place anything *on the ballot* that a citizen or group of citizens might wish to say to their government.").

The instances in which this Court has applied a "compelling state interest" test to a "right to petition" claim have involved an individual's accessibility to the court system, *NAACP v. Button*, 371 U.S. 415 (1963); *Brotherhood of Railway Trainmen v. Virginia*, 377 U.S. 1 (1964), the right of groups and individuals to lobby the legislative or executive branch for the purpose of influencing the passage or enforcement of laws, *Eastern Railway Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and the right of people to publicly protest, *Brown v. Louisiana*, 383 U.S. 131 (1966). Accordingly, most of the cases which the Petitioners cite to support their arguments concern types of "petitioning for redress" which are very different from the type of "petitioning" involved in the present matter. *E.g. McDonald v. Smith*, 472 U.S. 479 (1985) (involved the right of an individual to send letters to government officials expressing dissatisfaction with the actions of other government officials) and *Pena v. Nelson*, 400 F. Supp. 493 (D. Ariz. 1975) (like *Meyer*, involved restrictions on who could circulate petitions). Other cases cited by the Petitioners do not involve petitioning, or the right to petition, at all. *E.g., United Mine Workers of America v. Illinois State Bar Assn.*, 389 U.S. 217 (1967); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

The right which Petitioners are seeking to enforce – the right of persons to have their signatures counted on an initiative petition – more closely resembles the right to vote than the right to petition the Government for a redress of grievances. Participation in the initiative process can really be viewed as a part of the whole electoral process, and an initial step in exercising the right to vote. Therefore, the cases upholding voter registration restrictions provide better precedent in this matter than *Meyer v. Grant* and the other cases cited by the Petitioner. These cases all use a lesser test for constitutionality than the "compelling state interest" test. *See Hoffman*, 928 F. 2d at 648; *Duprey*, 518 P. 2d at 810; *Citizens' Comm. for Recall*, 507 P. 2d at 116 (1973); *Williams*, 350 F. Supp. at 650 (E.D. Pa. 1972).

Furthermore, two federal courts have held that signing a petition to initiate legislation is entitled to even *less* protection than the right to vote. *Taxpayers United for Assessment Cuts v. Austin*, 994 F. 2d 291, 296 (6th Cir. 1993); *Kelly v. Macon-Bibb County Bd. of Elections*, 608 F. Supp. 1036 (M.D. Ga. 1985). In *Kelly*, the Middle District Court of Georgia stated:

> Plaintiffs . . . have not been prohibited from exercising a fundamental constitutional right. This [a case involving the right to sign a petition to initiate legislation] is not a "right to vote" case; referendums, unlike general elections for a representative form of government, are not constitutionally compelled. . . . By allowing an "opt out" procedure by way of local referendums, the state did not create a fundamental right protected by the Federal Constitution. . . . There being no fundamental constitutional right to call

> a local referendum, defendants are not required to establish a compelling state interest in support of their construction of the challenged statute.

The Sixth Circuit Court of Appeal in *Austin* considered this Court's ruling in *Meyer v. Grant*, but held that the state-created right to ballot access should not be afforded the same degree of protection as the right to free speech involved in *Meyer*. The court held that the right to initiate legislation is a wholly state-created right, and that the state may constitutionally place nondiscriminatory, content-neutral limitations on the plaintiff's ability to initiate legislation. 994 F. 2d at 297. The court found that the technical requirements for validating initiative petition signatures did not restrict the means that the plaintiffs could use to advocate their proposal, and did not limit speech on the basis of content. Citing *Anderson v. Celebreeze*, 460 U.S. 780 (1983), the court held that the state had a strong interest in ensuring that proposals are not submitted for enactment into law unless they have sufficient support.

Similarly, the statute at issue imposes nondiscriminatory, content-neutral restrictions on inactive voters' ability to participate in the initiative process. Like the initiative procedure considered in *Austin*, the charter provision creating the initiative process is a wholly state-created right, and the restrictions affecting this right are rationally related to the state's interest in requiring a substantial showing of public support to avoid overloaded ballots, frivolous initiative proposals, wasteful election costs and voter confusion. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 193-194 (1986); *Anderson*, 460

U.S. at 788-789 (1983); *American Party of Texas v. White*, 415 U.S. 767, 782 (1974); *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). Section 98.081, like the other state purge statutes found to be constitutional, also prevents voter fraud by limiting the possibility that petition circulators could obtain a list of inactive voters and use their names to meet the quota requirement under section 10.07 of the City Charter. Because of all these compelling and important state interests advanced by § 98.081, and because of its very minimal requirements for reinstatement, Petitioners' arguments are unfounded.

2. Section 98.081 imposes only a minimal burden on purged voters in order to reinstate their registration and validly sign initiative petitions.

Petitioners repeatedly assert in their Petition for Writ of Certiorari that persons whose names are purged from the voter registration books under Florida Statutes § 98.081 (1993) are "completely denied" the right to petition the government. This assertion is simply not true. Unlike many of the cases which Petitioners cite where individuals were precluded from ever exercising their rights, all purged voters have to do to regain their right is to return a form to the Supervisor. Section 98.081 imposes only a very minimal burden on the purged voter to become reinstated. These individuals' ability to validly sign initiative petitions is completely within their control. It is only because they failed to vote for more than two years, or to return the simple form mailed to them by the Supervisor, that they are now unable to validly sign an initiative petition.

Like the petitioners in *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973), the purged voters could at any time have chosen to exercise their right to participate in the electoral process by performing the simple task of notifying the Supervisor, but for whatever reason, they chose not to do so. As this Court noted in *Rosario*, their plight was not caused by the statute at issue, but by the Petitioners' own failure to take steps to exercise their right. 410 U.S. at 757. Section 98.081 does not take away the inactive voters' right to validly sign petitions – these individuals suspend their own rights by not properly notifying the Supervisor of the desire to remain qualified voters.

IV.

THE PURGE CONDUCTED UNDER FLORIDA STATUTES § 98.081 IS ROUTINELY TIMED AND PROVIDES INACTIVE VOTERS WITH NOTICE THAT THEY WILL LOSE THEIR ELECTOR STATUS WHEN PURGED.

Florida Statutes § 98.081 (1993) directs the Supervisor to send a form to inactive voters clearly stating that "to remain a voter" the individual must sign and return the form or he will be "suspended from the list of voters." (Petition for Writ, pp. A58 - A60). These inactive voters are then given thirty days to return the form before they are purged. Section 98.081(1), Fla. Stats. (1993). Therefore, these individuals received notice that they would lose their ability to participate in the electoral process by not returning the form.

Section 98.081 specifically requires supervisors to conduct a purge each odd-numbered year. In Hillsborough County, this purge occurs at the same time each odd-numbered year. (App., p. A2 - A4). Therefore, the timing of the purge is not random or arbitrary. Additionally, regardless of when the purge is held, the individual is notified and given thirty days to return the form before he can be purged under the statute.

CONCLUSION

The Florida Supreme Court accurately analyzed the legal issues presented in this case and correctly upheld Florida Statutes § 98.081 (1993). Petitioners raise no genuine issues justifying certiorari review by this Court. Certiorari should therefore by denied and the judgment of the Florida Supreme Court left intact.

Respectfully submitted,

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APPENDIX

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY CIVIL DIVISION

THE TAKE BACK TAMPA POLITICAL COMMITTEE and RICHARD M. CLEWIS, III, Petitioners, vs. ROBIN C. KRIVANEK as the HILLSBOROUGH COUNTY SUPERVISOR OF ELECTIONS and FRANCES HENRIQUEZ as City Clerk of the City of Tampa, Respondents.	CASE NO.: 91-9798

DEPOSITION OF: ROBIN C. KRIVANEK

TAKEN: Pursuant to Notice by Counsel for the Petitioners

DATE: November 8, 1991

PLACE: Dreyer & Associates, Inc.
One Mack Center, Suite 100
501 East Kennedy Boulevard
Tampa, Florida 33602

TIME: 4:30 p.m. - 7:15 p.m.

REPORTED BY: Barbara H. Kiley, RPR-CP
Notary Public, State of Florida at Large

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[p. 38] reinstate them under those circumstances a strict or a liberal interpretation of the statute as it relates to the right to petition the government?

A The failure to reinstate is – I imagine it's a strict interpretation of that statute. I'm not sure if I'm qualified to make an evaluation like that.

Q I think your input could have some relevance to it.

Let me back up. Did you know that the Take Back Tampa petition drive was in progress when you ordered the 25,000 names put on the inactive list?

A Yes.

Q When exactly did you do the two previous purges? The one in '89 and the one in '87.

A We're given the whole odd-numbered year to do it. I believe it was determined that we had done both of them previous in May or June, approximately the same time of year.

We try to do this as early in the year as possible. In case any special elections come along, we will have gotten our file cleaned up, and the procedure won't interfere. This year we had a city of Tampa election – two elections in March, and so [p. 39] we waited until after those city elections to start the process.

Q And when did you start the process?

A We order the cards in April, I believe, and got them in May and mailed them out on, I believe, May 16th.

Q What records do you have showing us the exact date that you did the purge, the previous two purges?

A I don't have any records with me at the moment.

Q Does one exist?

A Oh, I'm sure it does.

Q What kind of records would it be?

A I would assume either – I'm sure we have purge cards from those years, because we have to keep them for a while, that would have the mailing dates on them, and we may have computer dated program actions.

Q Have you reviewed those to determine the dates when the purges were conducted in '87 and '89?

A No, no. I have not. The question was asked, and I'm not sure whether it was asked by the county or by you folks, for somebody on my staff to look back to see when those purges were carried out, [p. 40] but I don't have any personal knowledge.

MR. CONWELL: Bob, I'd like to get those records.

MR. WARCHOLA: I'll give you the commitment that I'll try. That's the best I can do. I can't guarantee I will have them at eleven o'clock, if that's what you're talking about. Monday is a holiday for us.

MR. CONWELL: This is a record that someone in Mrs. Krivanek's office reviewed recently in connection with this matter, I believe she's testified, and perhaps we could request Mrs. Krivanek to speak to that person so that maybe they could direct you to it.

BY MR. CONWELL:

Q Is there any reason why the purge was done on June 21st as opposed to June 22nd?

A The cards were mailed out on May 16th. The law says that the people have 30 days in which to return them from the date of mailing. June 15th, I believe, was end of the 30 days. That was a Monday.

Q I'm sorry. What date?

[p. 41] A June 15th, I think, is 30 days after May 16th. The county's data processing department has difficulty in working in a large job during the week. So at the end of that week, Friday, they began the actual suspension process, so it was actually begun – I think it was actually run between the 21st and 22nd.

Q Is there any reason why it could not have been done on the 23rd?

A No, there was no reason that it could not have been done on the 23rd.

Q Is there any reason why it couldn't have been done on June 30th?

A There's no reason to pick any specific date other than one that comes after the 30-day period elapses. You have to do it sometime, and presumably – it says they have that 30 days in which to return cards.

Q Sure.

A So the implication is, and in fact the law does say that you shall – let me just get the wording here.

"Electors failing to return the forms within this period shall have their names withdrawn temporarily from the registration books." So we

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